STATE OF MICHIGAN

COURT OF APPEALS

ROGER ZATKOFF REVOCABLE TRUST, ROBERT J. NYQUIST and MIRIAM NYQUIST,

Plaintiffs-Appellees,

v

BRIAN A. MARTIN, DALE E. BREITENWISCHER, DONNA BREITENWISCHER, ARTHUR E. ELLIS, CONSUMERS POWER COMPANY, PEGGY L. BANNIGER, CATHERINE MARTIN, ROBERT E. HOWE, EDWARD H. BARNES, KENT FAMILY LIVING TRUST, WILLIAM STEPHANOFF, MARILYN J. BARNES, GEORGE H. GLEISS, JR., BESSIE STEPHANOFF, ERIC K. HONSOWETZ, JOYCE GLEISS, WALTER R. CREMEANS, LOIS L. HONSOWETZ, LESLIE A. NEUENDORFF, WINNIE CREMEANS, TERRANCE W. CREMEANS, GTE NORTH, INC, CURTIS E. CREMEANS, BAGLEY TOWNSHIP SUPERVISOR, JOE BIERNASZ, ANN BIERNASZ, RUSSELL BLACK, JANET BLACK, HARRY COMOLOTO, MARLIN COMOLOTO, M.A. GRISHKOFF, NINA GRISHKOFF, PHYLIS LAMSON, GEORGE McDOUGALL, CARRIE McDOUGALL, STANLEY MIDDLETON, SHIRLEY MIDDLETON, RICHARD PROTEAU, ROSE PROTEAU, RAYNOR ZILLGIT, and JACK DEMING,

Defendants,

and

UNPUBLISHED
February 4, 2000

No. 211853
Otsego Circuit Court
LC No. 95-006271 CH

MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES,

Defendant-Appellant,

and

GEORGE CZANSTKE, HELEN CZANSTKE ANTHONY CZANSTKE, MONIQUE M. JACOBSON

Defendants-Appellees

Before: Talbot, P.J., and Gribbs and Meter, JJ.

PER CURIAM.

Defendant Michigan Department of Consumer and Industry Services (CIS), appeals as of right the trial court's decision to dismiss the action pursuant to a settlement to which it did not agree. We reverse.

In 1909, the Kokozen subdivision was platted along the western shore of Ostego Lake near Gaylord. Its streets streets, alleys, and parks were dedicated to the use of the public. Plaintiffs, who own real property in Kokozen, brought an action to vacate the public interest in various platted but undeveloped streets and alleys and to vest title to the property in the owners of the abutting lots. Plaintiffs joined CIS and other public entities as necessary party defendants pursuant to MCL 560.224a(1)(c); MSA 26.430(224a)(1)(c).[1] Following a mandatory settlement conference, which CIS did not attend, plaintiffs and certain named defendants agreed to vacate the public interest in the streets and alleys specified in the complaint. The agreement also provided for dockage for some lot owners and the vacating of the park and certain other public streets, neither of which were requested in the complaint.

It is undisputed that CIS did not agree to this settlement and formally objected to the trial court's entry of an order pursuant to the settlement.[2] Following the hearing to settle the judgment, the trial court ruled that no part of the settlement would be deleted because all parties were given notice of the settlement conference, and those parties who appeared had reached an agreement. The court further stated that the agreement had been placed on the record and would be put into effect as an order of the court. Accordingly, the trial court entered an order approving the settlement agreement and dismissing the case.[3]

On appeal, CIS argues that the trial court erred in entering the order approving the settlement and dismissing the case. We agree. In general, public and judicial policies favor settlements. *Steele v Wilson*, 29 Mich App 388, 395; 185 NW2d 417, 420 (1971); see also *Henry v Prusak*, 229 Mich App 162, 171; 582 NW2d 193 (1998). However, a settlement is a contract, and is governed by the legal principles applicable to contracts generally. *Hisaw v Hayes*, 133 Mich App 639, 642; 350 NW2d 302 (1984). It is basic to the law of contracts that no contract can arise except on the express mutual assent of the parties. *Brown v Considine*, 108 Mich App 504, 507; 310 NW2d 441 (1981). It is axiomatic therefore that a court cannot make contracts or "force settlements upon parties." *Hill v Farmers' Mut Fire Ins Co of Manistee, Benzie & Mason Counties*, 129 Mich 141, 143; 88 NW2d 392 (1901); *Henry, supra* at 170. In this case, CIS was joined as a necessary party and did not agree to the private parties' stipulation to extinguish the public's right to the property. To the contrary, the record reveals that CIS objected to the settlement agreement and did not subscribe to it in writing as required by MCR 2.507(H).[4] After a de novo review, we therefore conclude that CIS is not bound by the settlement agreement and that the trial court erred in dismissing the case pursuant to a settlement to which CIS did not agree.

Reversed.

/s/ Michael J. Talbot
/s/ Roman S. Gribbs
/s/ Patrick M. Meter

[1] CIS (formerly the Department of Commerce) is the successor to all powers, duties, functions, and responsibilities of the State Treasurer under the Subdivision Control Act, MCL 560.101 *et seq*.; MSA 26.430(101) *et seq.,* and as such, is vested with the responsibility of ensuring that Act's requirements are met.

[2] CIS objections included, but were not limited to, the following (1) the settling parties failed to attach a final order or settlement agreement to the "Notice of Hearing for Settlement of Final Order", (2) the agreement exceeded the relief sought in the complaint by vacating the park and other streets which were not requested, (3) the court lacked jurisdiction to vacate lands dedicated to the public since local government with jurisdiction over the property had not approved the vacation via resolution, (4) the agreement would result in land locking by depriving certain lots of direct access to a street or road, (5) proposed plat modifications were not sufficiently specific as to the type, width, and location of the easements to be preserved, (6) the agreement eliminated public access to Otsego Lake and therefore plaintiff's action was defective because the director of the Department of Natural Resources had not been joined as required by the Land Division Act, and (7) the agreement purported to create a riparian parcel from land previously dedicated as a public park without consideration of the inland lakes and streams provision of the Natural Resources and Environmental Protection Act.

[3] After CIS filed its claim of appeal, it stipulated to amend the trial court's final order and settlement agreement incorporated therein to keep certain streets open to the public.

[4] While we recognize that neither CIS nor its counsel appeared at the mandatory settlement conference, the trial court never entered a default against CIS pursuant to MCR 2.401(G).